

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of

Numbering Resource Optimization

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CC Docket No. 99-200

TO: The Commission

OPPOSITION TO AND SUPPORT FOR
PETITIONS FOR RECONSIDERATION

VoiceStream Wireless Corporation ("VoiceStream") respectfully submits the following opposition to and support for certain aspects of the petitions for reconsideration of the *Report and Order* released on March 31, 2000 in the above-captioned proceeding.¹ As explained in more detail below, VoiceStream urges the Commission to (1) rely on MTE Worksheets to evaluate applications for growth codes, (2) reaffirm that carriers have six months from receipt of a code to activate it, (3) reaffirm that number rationing is unacceptable and cannot be used to qualify for additional authority to implement number pooling or as a substitute for the introduction of a new area code, (4) reaffirm the sequential number assignment requirements, (5) ensure that any disaggregated, carrier-specific numbering data is adequately protected by confidentiality guarantees, and (6) deny state requests for contemporaneous notification by NANPA of carrier filings.

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¹ *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104 (rel. March 31, 2000) ("*Report and Order*").

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I. THE FCC SHOULD RELY ON MTE WORKSHEETS TO EVALUATE APPLICATIONS FOR GROWTH CODES

Many petitions for reconsideration demonstrate the need for the FCC to rely on MTE Worksheets to evaluate applications for growth codes, or at a minimum to adopt a safety-valve procedure if utilization thresholds are maintained.² These petitions are consistent with the comments and reply comments that were filed in this proceeding, including those of some states.³ As VoiceStream has demonstrated, reliance on specific percentage utilization thresholds is totally flawed, as these thresholds merely provide a static measurement of numbering utilization but do not reflect any immediate need for numbers or any timeframe for projected exhaust.⁴ Moreover, it would discriminate against certain groups of carriers and prevent them from receiving needed numbering resources.⁵ For example, it will be easier for incumbent carriers with substantial existing inventories to meet specific percentage utilization thresholds than new entrant competitors with small inventories, regardless of actual need.

At a minimum, the FCC must adopt a safety valve mechanism to prevent the harms that result from reliance on specific utilization thresholds.⁶ This safety valve mechanism is necessary to assure that a carrier who needs numbers has an alternative method to demonstrate its need. The only safety valve mechanism that could be effective would be a demonstration of

² See, ALTS Petition at 7; BellSouth Petition at 17-20; PCIA Petition at 3-6; Verizon Wireless Petition at 25-26; VoiceStream Petition at 9-16.

³ See Comments filed in response to the FCC's Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104 (released March 31, 2000), of California PUC at 5; Maine PUC Comments at 3-4; New Hampshire PUC Comments at 4; New York PSC Comments at 2, all of which concur that the FCC needs to have a safety-value if it chooses to rely on percentage utilization thresholds.

⁴ Reliance upon these utilization thresholds would allow carriers whose growth is static, or even declining, to acquire telephone numbers and penalize carriers who are new entrants or who have significant growth. In other words, carriers who may not need them will be legitimate applicants while carriers who do need them may not be. Surely, this is not the Commission's intended result.

⁵ See, e.g., footnote 2.

⁶ See, e.g., ALTS Petition at 7; Verizon Wireless Petition at 25-26.

need based on an MTE Worksheet or its equivalent. However, if MTE Worksheets or their equivalents are the critically necessary “safety valve” as the overwhelming number of parties who have participated in this proceeding agree, then there is no justification for the FCC to rely on a specific percentage utilization threshold in the first place.

The Commission apparently chose to rely on a specific utilization percentage out of a concern that MTE Worksheets, which rely in part on subscriber forecasts, would not assure it that a carrier applying for additional numbers had an actual need for them. However, especially given the trilogy of rules the Commission adopted in its *Report and Order*, the Commission’s concern is misplaced. Reliance on MTE Worksheets rather than utilization thresholds, in particular in conjunction with the other rules adopted by the Commission, will strengthen, not weaken the Commission’s ability to ensure that carriers do not request numbers until they have an actual need for the additional resources. By adopting number utilization reporting obligations, by allowing the NANPA and the state public service commission to institute number reclamation if the codes are not activated within the requisite amount of time, and by ensuring that new numbering resources are not put into service until existing resources are fully utilized, the Commission has established a process which will assure that numbers are not requested until there is an actual need. There would be no point to premature requests for numbers, if the NANPA, in conjunction with the states, is authorized to reclaim them at the end of the requisite time period, and if in any event a carrier’s lack of need would be evident from its reports to NANPA. There is simply no means any longer of warehousing numbers for which a carrier does not have an immediate need,⁷ so there is no reason to even try to game the process.

⁷ VoiceStream considers an “immediate need” to be expected resource exhaust in six months or less.

In contrast to specific percentage utilization thresholds, MTE Worksheets are a substantially better resource, both because use of MTE Worksheets will not discriminate against any class of carriers or subscribers, and because they far more closely approximate actual need. Every carrier would be entitled to obtain additional numbering resources when its MTE Worksheet demonstrates that it has a six-month or less inventory of available numbering resources, and no carrier would be entitled to additional numbering resources unless they were able to make such a demonstration.⁸

Moreover, by relying on MTE Worksheets rather than utilization thresholds, the Commission can avoid what seems to be among the most confusing and contentious issues raised in the petitions for reconsideration – that is, which classification of numbers should be considered “activated,” and which should not. Almost every petition for reconsideration raised this issue in one way or another, each concerned that the Commission’s *Report and Order* did not properly account for a particular classification, *e.g.* aged, administrative, reserved, and/or intermediate numbers, in its consideration of active numbers. VoiceStream submits that the Commission can achieve its objective to ensure that a carrier actually will need additional telephone numbers before it requests them, and avoid some of this controversy by simply adopting the MTE Worksheets as the basis upon which NANPA will consider grants of additional codes.

If the Commission does continue to rely on utilization thresholds, then VoiceStream would join with others urging the Commission to better recognize and classify those numbers which are not available for assignment. One way to do this would be to treat

⁸ For the same reasons, the FCC should deny those petitions for reconsideration, including the MPUC’s request that the FCC apply a fixed percent utilization rate requirement to all pooling carriers’ requests for growth codes. MPUC Petition at 3-5.

aged, administrative and reserved numbers, at least conceptually, in the same manner Form 502 treats intermediate numbers. FCC Form 502 makes clear that intermediate numbers are excluded from the denominator of the utilization formula and, thus, are neither available for assignment nor even part of that carrier's inventory. However, in a similar fashion, VoiceStream submits that aging, administrative, and reserved numbers should be included within both the numerator and denominator as they, too, are not available for assignment to end users, even though they are part of that carrier's inventory.⁹ The current utilization formula, which treats these numbers as if they were available for assignment, discriminates against carriers that have a larger percentage of these types of numbers, regardless whether the carrier has any ability to reduce these percentages.¹⁰ Therefore, if the FCC does not choose to rely solely on MTE Worksheets to evaluate requests for additional numbering resources, it must both adopt a safety valve mechanism and modify the utilization formula by including aging, administrative, and reserved numbers within the numerator of the utilization formula, while excluding intermediate numbers from both the numerator and denominator.¹¹

VoiceStream also supports ALTS' request that the FCC clarify that utilization thresholds, or even MTE Worksheets, will only be evaluated on a rate center basis, and never on an NPA- or nation-wide basis.¹² Neither nationwide nor NPA utilization statistics by carrier would have any value. For example, suppose that a new entrant had a nationwide utilization of

⁹ See ALTS Petition at 6; BellSouth Petition at 11-15; SBC Communications at 7-8; Verizon Petition at 5-6; Verizon Wireless Petition at 1-5.

¹⁰ For wireless carriers, blocks of "administrative" numbers are required to provide roaming services and E911 Phase 1 location services to public safety centers.

¹¹ Industry work groups, under the guidance of the North American Numbering Council, are currently developing audit guidelines, processes and procedures to verify service provider compliance with the Commission's orders which, when approved, will make it all the more improbable that a provider would be able to successfully get or retain numbers it does not need.

¹² See ALTS Petition at 7-9.

10%. That 10% would not be a reflection of underutilization of code in any given area, but would simply mask actual specific rate center utilization, which is the relevant criterion in applying for a new code in that particular rate center. The Commission has previously recognized that the vast majority of carriers assign numbers by rate center, in significant part in order to maintain the local dialing patterns and cost characteristics to which businesses and consumers in that rate center, or in “local” adjacent rate centers, have grown accustomed¹³. To do anything else would disrupt consumer expectations in this regard, and create a whiplash against new entrants by the very customers they seek to serve. Thus, utilization needs to be measured solely by rate center.¹⁴

II. THE FCC SHOULD CONFIRM THE CLARIFICATION OF THE “ACTIVATION DATE” THAT IT PROVIDED TO NEUSTAR

Many of the petitions for reconsideration express concern about the ambiguity of the “activation deadline” in the *Report and Order*.¹⁵ VoiceStream recognizes that the FCC actually clarified this issue in a Letter Agreement dated July 18, 2000 between the FCC and NeuStar, Inc., which was released after the filing deadline for petitions for reconsideration.¹⁶ Specifically, the Letter Agreement clarified that a carrier has six months from code effective date to return the Part 4 Form. If a carrier does not file the Part 4 Form, NANPA must begin the reclamation process within 60 days after the end of the six-month period.¹⁷ VoiceStream

¹³ See e.g. *Report and Order* at ¶¶ 68, 104-105.

¹⁴ Although the FCC has not mandated rate center consolidation, many states have successfully implemented this numbering optimization measure. VoiceStream commends these efforts and hopes that these states share their experiences with others facing similar circumstances.

¹⁵ See ALTS Petition at 2-5; BellSouth Petition at 24-25; PCIA Petition at 7-10; Verizon Wireless Petition at 11-12; Winstar Petition at 2-9; WorldCom Petition at 8, 10.

¹⁶ Letter Agreement 1 between Andrew S. Fishel, Managing Director, FCC, and Gregory J. Roberts, Vice President, Numbering Services, NeuStar, Inc. at Attachment 1, page 4 (dated July 18, 2000).

¹⁷ *Id.*

welcomes this clarification, and urges the FCC to reaffirm here that carriers have six months from the code effective date in order to place a code “in service.”¹⁸

III. THE FCC SHOULD REAFFIRM THAT NUMBER RATIONING IS UNACCEPTABLE AND NOT ALLOW RATIONING TO BE USED TO QUALIFY FOR AUTHORITY TO IMPLEMENT NUMBER POOLING

VoiceStream urges the FCC to clarify that number rationing is incompatible with the federal numbering policies, rules and guidelines, as Sprint requests in its petition for reconsideration.¹⁹ There is no justification for permitting continued rationing under the national numbering framework established by the *Report and Order*. Under the Commission’s rules adopted in the *Report and Order*, only carriers with a demonstrated need for numbers will be able to get additional codes. Those carriers that have not opened codes within the permissible amount of time will be required to return them, and be subject to the reclamation process of the NANPA and the state commissions. The interlocking action of these rules assumes that only carriers which need numbers will be able to acquire or return them. But the corollary must also be true: carriers that need numbers must be able to obtain them in a timely fashion. Rationing only hinders fulfillment of these objectives, because all carriers participating in any lottery or ration scheme have already demonstrated their need for telephone numbers, but many will not receive them unless the total number of requests is less than the number of codes available for assignment that month. Reliance on rationing in these circumstances would likely be used by the

¹⁸ VoiceStream has identified extraordinary circumstances where an initial code in an operating area may be required much earlier than six-months prior to assignment to end user customers. Specifically, wireless carriers need to assign telephone numbers to each antenna’s radio sectors to provide E911 Phase 1 services. The earliest need for such assignments may be one year or more before the network is capable of supporting paying customers. The Commission should provide the capability to waive even the six-month rule under such circumstances. *See* VoiceStream Petition at n.21.

¹⁹ Sprint Petition at 16.

states only to forestall area code relief, and the Commission has repeatedly held that rationing may not be implemented for that purpose.²⁰

The FCC should also clarify that an NPA is eligible for pooling only if it has a “true” life span of at least one year, not an “artificial” life span that has been lengthened by a number lottery or other rationing scheme.²¹ This clarification is necessary to ensure that there is no incentive to implement number rationing simply to qualify for number pooling by artificially lengthening the life span of the NPA. This clarification is particularly appropriate given the fact that NPAs with natural life spans of less than one year will not benefit from pooling.

VoiceStream recognizes that states face significant political pressure to show they are actively managing an NPA exhaust situation through the introduction of number pooling, despite its limited help in such circumstances. However, any lottery or other rationing scheme has a direct impact on the service providers’ ability to activate new customers when they are not permitted to obtain the numbering resources they need. Giving the states an incentive to prolong lottery situations is not in the public interest and competitively disadvantages new entrants with high growth rates, and fewer, if any, numbers in inventory.

IV. THE FCC SHOULD CLARIFY ANY SEQUENTIAL NUMBERING REQUIREMENTS

In its petition for reconsideration, VoiceStream noted that the Commission’s “sequential number assignment” rule does not mean that thousands blocks should be required to be at a 100 percent fill rate before opening up the next thousands block,²² nor, in VoiceStream’s view, do the current Commission rules require a carrier to assign all numbers sequentially within

²⁰ See Wisconsin Delegation Order, 15 FCC Red 1299 at ¶ 28, Pennsylvania Numbering Order, 13 FCC Red 19002, 19025 ¶ 24 (1998).

²¹ See ALTS Petition at 15; BellSouth Petition at 21-23; SBC Petition at 9; USTA Petition at 13-14.

²² See VoiceStream Petition at 9.

a thousand block. As the Commission noted, “[w]e agree with commenting parties who express concern that the strict sequential numbering requirement we discussed in the Notice may be too inflexible to meet customer needs.”²³ Rule Section 52.15(j), in accordance with this concern, requires only that such providers assign all available telephone numbers within all opened thousands blocks before assigning numbers from an uncontaminated block. Some petitioners, however, as evidenced in their petitions for reconsideration, have apparently been confused by the Commission’s continued use of the term “sequential number assignment,” and so it may be useful to modify Section 52.15(j)’s heading to eliminate that reference.

However, there is also a valid concern, identified by ALTS, that this section can be read to require all numbers in a thousands block to be assigned before opening another block. This interpretation would preclude a carrier from opening another block even when the carrier has no available numbers, but yet does not literally comply with the rule because some numbers are still in the aged or administrative status. Thus, this rule must be modified to assure that carriers in real need of numbers are not somehow penalized by this additional requirement. Therefore, VoiceStream urges the FCC to clarify that it intends to provide carriers with the flexibility to assign numbers as they choose within a thousands block and to open new thousands blocks as necessary, before the previous thousands block reaches a fill rate of 100 percent.

V. THE FCC SHOULD ENSURE THAT DISAGGREGATED, CARRIER-SPECIFIC NUMBERING UTILIZATION DATA IS PROTECTED BY ADEQUATE CONFIDENTIALITY GUARANTEES

In its petition for reconsideration, the PUCO submits that the *Report and Order* does not sufficiently detail the confidentiality guarantees that must be in place before state commissions have access to disaggregated, carrier-specific numbering data.²⁴ VoiceStream

²³ Order at ¶ 244.

²⁴ PUCO Petition at 10-13.

agrees entirely. The FCC should take all steps necessary to ensure that no disaggregated, carrier-specific data be released to any party, including a state commission, who cannot guarantee confidential treatment of that data.

The potential harm that could result from the disclosure of disaggregated, carrier-specific data is significant and irremediable. VoiceStream does not report subscribership or subscribership trends on a disaggregated basis by discrete geographic areas in its SEC filings or anywhere else, under any circumstances. VoiceStream only reports aggregated subscribership data on a nationwide basis. Information below this level of granularity is highly confidential even within VoiceStream itself, and is made available only on a need-to-know basis. This information is valuable competitively and can influence Wall Street and the stock prices of carriers. VoiceStream and its shareholders could be irreparably harmed if its subscribership information falls into the hands of its competitors, or if trading occurs based on some individuals' access to confidential information.

Adding to the concern is the timing that the Commission has chosen to adopt for reporting its use of numbering resources. If allowed to stand, highly sensitive information on a company's success or failure will be available to NANPA, and may be available to state commission personnel, thirty days following the close of a fiscal quarter. Since most corporations report their financial and operating results thirty to forty-five days following the close of a quarter, tens, if not hundreds, of individuals will be privy to data that can adversely impact a company's performance in the equity markets. VoiceStream would recommend that the Commission consider having reports due to NANPA forty-five days following the close of the quarter to eliminate any potential for improper activity. The FCC should further limit access to this information, at the FCC, NANPA and the state commissions, to those with a clear need to know, and otherwise establish clear guidelines to ensure that adequate confidentiality safeguards are in place for all entities, both federal and state, with access to this information. If necessary,

personnel with access to such information should be held to SEC rules regarding actions they may legally take.

VI. THE FCC SHOULD DENY PETITIONS FOR RECONSIDERATION THAT SEEK TO IMPOSE UNNECESSARY BURDENS ON NANPA

The FCC has properly vested in NANPA significant amounts of responsibility for assuring that numbers are only allocated once there has been a demonstration of need. To fulfill these responsibilities, NANPA will need adequate staff to perform their substantial obligations. It is important that NANPA not be allowed to be sidetracked from this important task through the imposition of additional responsibilities that are not directly in line with its own obligations, or which could be administratively burdensome.

One request contained in the CPUC's petition for reconsideration which falls into the latter category is the request that the NANPA notify the state commissions "contemporaneously" of each code request it receives. Given the number of states, the number of carriers, and the number of rate centers involved, it could be a full-time job for several administrative persons in order to fulfill this request. This, of course, would increase the costs of number administration, but without any substantial countervailing benefit. The Commission has already recognized in its July 18 letter to Neustar that NANPA may provide this information to state commissions, but as a separate "enterprise" service, with attendant fees to be assessed the states.

It is NANPA, not the states, which is first responsible for determining whether a carrier is entitled to an initial or growth code. Once NANPA denies a code, however, as the rules currently read, the carriers seeking redress from an adverse NANPA decision may petition the state for relief. It is at that point that the state commission will review a NANPA action, but there is absolutely no reason that a state, or other entity, should be entitled to receive notice of any code request unless they are willing to separately shoulder that expense, and unless

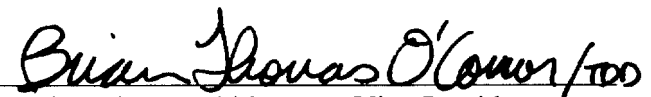
providing such information does not impact NANPA's ability to fulfill its responsibilities in the same time frame as it could without the enterprise tasks. The process must continue to be streamlined, even given the additional information that will be required, and not made more cumbersome by requiring NANPA to take additional, unwarranted steps.

VII. CONCLUSION

For the foregoing reasons, VoiceStream urges the Commission to (1) rely on MTE Worksheets to evaluate applications for growth codes, (2) reaffirm that carriers have six months from receipt of a code to activate it, (3) reaffirm that lottery and number rationing are unacceptable restraints on a competitive marketplace and cannot be used to qualify for additional authority to implement number pooling or as a substitute for the timely introduction of a new area code, (4) reaffirm the sequential number assignment rules, providing the administrative flexibility service providers' require, (5) ensure that any disaggregated, carrier-specific numbering data is adequately protected by confidentiality guarantees and modified reporting requirements that minimize the potential for improper use of confidential data, and (6) deny requests for contemporaneous notification of state commissions of carrier filings.

Respectfully submitted,

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DATED: August 15, 2000

CERTIFICATE OF SERVICE

I, Shannon Robbins, hereby certify that on this 15th day of August 2000, I have caused a copy of the foregoing "Opposition to and Support For Petitions for Reconsideration" of VoiceStream Wireless Corporation to be filed electronically and hand delivered* to the following:

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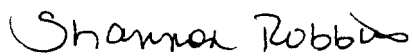
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